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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE BARNES et al.,

Defendants and Appellants.

B289381

Los Angeles County
Super. Ct. No. BA443707

APPEALS from judgments of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed in part, reversed in part, and remanded with directions.

Matthew D. Alger under appointment by the Court of Appeal, for Defendant and Appellant, Ronnie Barnes.

Jennifer A. Mannix under appointment by the Court of Appeal, for Defendant and Appellant, Marquice Easley.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, David E. Madeo and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendants Ronnie Barnes and Marquice Easley conducted a spate of home invasion robberies. The jury found Barnes guilty of 31 felony counts, including murder, attempted murder, kidnapping to commit robbery, robbery, aggravated assault, and false imprisonment. Easley was convicted of 15 felony counts, including kidnapping to commit robbery and false imprisonment. Both defendants received sentences extending well beyond their natural lifetimes.

Defendants appeal, contending: (1) there was insufficient evidence to support the kidnapping to commit robbery convictions because their movements of the victims were incidental to the robberies and did not increase the risk of harm to the victims; (2) the kidnapping to commit robbery statute is unconstitutionally vague; and (3) the court improperly amended the indictment to add two counts of false imprisonment. Defendants also raise sentencing errors.

Because the movements of the victims inside their homes were incidental to the robberies under *People v. Daniels* (1969) 71 Cal.2d 1119 (*Daniels*), we reverse defendants' kidnapping for robbery convictions. We also conclude the court could not amend the indictment to add new charges and reverse defendants' convictions for false imprisonment. Finally, we vacate defendants' sentences and remand for resentencing.

PROCEDURAL BACKGROUND

In April 2016, Barnes and Easley were each charged by indictment with the following felony counts: conspiracy to commit residential robbery (Pen. Code, §§ 182,¹ subd. (a)(1), 211; count 1); attempted residential robbery (§§ 664, 211; counts 2, 18 and 19); assault with a firearm (§ 245, subd. (a)(2); counts 3, 7, 8 and 21); kidnapping to commit robbery (§§ 209, subd. (b)(1), 211; counts 4, 9, 13, 23 and 28); residential robbery (§ 211; counts 5, 6, 10, 11, 14, 24, 25, 29, 30, 31 and 32); assault with a semi-automatic firearm (§ 245, subd. (b); counts 12, 15, 26 and 27); attempted kidnapping for robbery (§§ 664, 209, subd. (b)(1); counts 16 and 17); attempted premeditated murder (§§ 664, 187, subd. (a); counts 20, 33, 34 and 35); and murder (§ 187, subd. (a); count 22).

Except for the conspiracy count, the indictment alleged firearm enhancements (§§ 12022.5, 12022.53, subds. (b), (c), and (d)) for each count. Several counts alleged defendants personally inflicted great bodily injury (§12022.7, subd. (a); counts 9–15, 21 and 23–26). The murder count alleged defendants committed the murder while attempting robbery (§ 290.2, subd. (a)(17); count 22). As to Easley, the indictment alleged four prior prison terms (§ 667.5, subd. (b)), two serious felony priors (§ 667, subd. (a)(1)), and three prior strikes (§§ 667, subd. (d), 1170.12, subd. (b)). The indictment alleged Barnes served two prior prison terms (§ 667.5, subd. (b)).

In January 2018, the court granted Barnes’s section 995 motion to strike counts 9, 16, 17, and 23, and it denied the motion as to counts 4, 13 and 28. The court also granted Easley’s

¹ All undesignated statutory references are to the Penal Code.

section 995 motion to strike counts 9, 16, 17, 23, 28–35, and it denied the motion as to counts 4 and 13.

On February 20, 2018, the court granted the People's motion to amend the indictment to charge both defendants with two counts of false imprisonment by violence (§ 236; counts 36 and 37).

The jury returned its verdicts on February 28, 2018. The jury found Barnes guilty of first degree murder with a special circumstance (count 22), attempted premeditated murder (counts 20, 33 and 34), attempted murder (count 35), kidnapping for robbery (counts 4, 13 and 28), first degree robbery (counts 5, 6, 10, 11, 14, 24, 25, 29 and 30–32), attempted robbery (counts 18 and 19), assault with a firearm (counts 7, 8 and 21), assault with a semi-automatic firearm (counts 12, 15, 26 and 27), conspiracy to commit robbery (count 1), and false imprisonment by violence (counts 36 and 37). The jury found true several firearm and great bodily injury enhancements.

The jury found Easley guilty of kidnapping for robbery (counts 4 and 13), first degree robbery (counts 5, 6, 14, 24 and 25), attempted second degree robbery (count 2), assault with a firearm (counts 7 and 8), assault with a semi-automatic firearm (count 15, 26 and 27), conspiracy to commit robbery (count 1), and false imprisonment by violence (count 37). The jury found true several firearm and great bodily injury enhancements. The jury did not reach a verdict on the charges of murder (count 22), attempted murder (count 20), attempted residential robbery (counts 18 and 19), and assault with a firearm (count 21). The court declared a mistrial as to these counts.

On April 5, 2018, the court sentenced Barnes to an indeterminate term of life without the possibility of parole for the

murder, plus six consecutive life terms for the three premeditated attempted murders and three kidnappings for robbery. The indeterminate terms were further enhanced by four 25-years-to-life terms for personally using a firearm causing great bodily injury or death, plus 33 years for the firearms and great bodily injury enhancements. In addition to the indeterminate terms, the court imposed a determinate term of 41 years and 8 months, plus 25 to life.

On the same day, the court dismissed the counts against Easley on which the jury did not reach a verdict. Easley admitted the alleged serious felony priors and prior strikes. The court sentenced Easley to eight consecutive indeterminate terms of 25 years to life, reflecting his convictions for two counts of kidnapping for robbery (counts 4 and 13), five counts of first degree robbery (counts 5, 6, 14, 24 and 25), and one count of attempted second degree robbery (count 2). The court imposed an additional 76 years for six firearms enhancements, two personal injury enhancements, and two serious felony prior enhancements.

Barnes and Easley each filed a timely notice of appeal.

FACTUAL BACKGROUND

Defendants were convicted of multiple crimes arising from seven separate home invasion robberies or attempted home invasion robberies. Defendants challenge the sufficiency of the evidence of kidnapping for robbery in three of those incidents. We describe those three incidents in detail and briefly summarize the remaining incidents.

1. Kidnapping for Robbery

1.1. Yuhong Huo²

On November 13, 2013, Yuhong Huo (Yuhong) was home in Torrance with her 15-year old son, Brian. Yuhong heard someone ring the doorbell around 6:40 a.m. Her husband and daughter had just left, and Yuhong thought maybe her daughter had forgotten something.

When she opened the door, Barnes and Easley pushed their way inside with guns. Barnes struck Yuhong in the head. Barnes put a gun to Yuhong's head and asked her who was in the house. She told them her son was sleeping, and she showed them to his downstairs bedroom. Barnes and Easley dragged Brian out of bed and hit him in the back of the head. They asked Yuhong where to find the gold, jewelry, and money. She told them everything was upstairs in her room. The men told Yuhong they would kill Brian if she did not give them the money, the gold, and the jewelry.

Upstairs in the master bedroom, the men ordered Brian to the floor. Barnes stayed with Brian, and Yuhong took Easley into an office where she had maybe \$1,000 dollars in cash. She begged Easley to take the money and leave. When he asked for more money, she took him downstairs where she had maybe another \$100 dollars in her purse. Easley told her if she held anything back, he would kill her. They went back to the bedroom, and the men had Yuhong get on the floor next to Brian. They put a gun to Brian's head and threatened to kill him if Yuhong did not give them everything. They demanded she tell them where the safe

² Based on these facts, both defendants were convicted of kidnapping for robbery, first degree robbery, and aggravated assault.

was, but she insisted there was no safe. She kept begging them to leave. Easley used telephone wire to tie Yuhong's and Brian's hands and feet, and defendants finished searching the house for valuables.

Before they left, Easley dragged Yuhong to a master bedroom closet, put her inside, and closed the door. After five or ten minutes, she realized the men were gone. Yuhong called out to Brian, and he responded. She pushed her way out of the closet and crawled over to him. She was able to free herself and Brian.

1.2. Ernest Contreras³

On November 25, 2013, Ernest Contreras was housesitting in Sylmar. About 9:50 a.m., he opened the front door, and Barnes and Easley pushed their way inside with guns.⁴ Contreras put his hands up, but the men slapped his hands and said "put your hands down mother fucker." They pushed Contreras to the ground and kicked him a couple of times. Contreras's ribs were tender for about two months.

One of the men got Contreras up, held a pistol to his ear, and marched him around the house. He marched Contreras to the kitchen, down the hallway, and into the master bedroom. In the master bedroom, he told Contreras to get on the ground. The walk from the front door to the kitchen was "25 feet or so." From the kitchen to the master bedroom was another 18 to 20 feet.

³ Based on the events of this day, both defendants were convicted of kidnapping for robbery, first degree robbery, and aggravated assault.

⁴ Contreras did not identify either man, but defendants were connected to the crime through DNA, phone records, and the spoils of the robbery.

In the master bedroom, Contreras was on his hands and knees, head down. One of the men was going through the drawers in the bedroom when he stopped and slammed his pistol down on the back of Contreras's head. Blood ran down the side of Contreras's head. Contreras remained still, hoping to survive.

The two men kept asking Contreras where the valuables were. Contreras protested he did not know, it was not his house, and he was only the house-sitter. They wanted to know where the safe was, but Contreras said he was unaware of any safe. One of the men said, "He's lying. Shoot him." Throughout the ordeal, the suspects' viciousness and profanity made Contreras believe the men were going to kill him.

Contreras was ordered into the hallway. One of the men tied Contreras's hands behind his back, tied his feet, and then tied the two bindings together. Once Contreras felt sure they were gone, he quickly got loose from his bindings and called the police.

Afterward, Contreras was taken to the emergency room where his head was stitched in four places with surgical staples.

1.3. Robert Humble⁵

On December 6, 2013, Robert Humble (Robert) and Marilyn Humble (Marilyn), both elderly, lived in Covina. Their great-grandson, Jon Ellis, and Ellis's good friend, Greg Portis, lived with them. Portis's two-year-old daughter, Leea, lived with them part-time.

⁵ Based on the events of this day, Barnes was convicted of attempted murder, kidnapping for robbery, and first degree robbery.

About 11:45 a.m., Ellis heard his great-grandfather screaming for help in the living room. Ellis, who was watching Leea while her father was away, came out to see what was happening. When Ellis got to the living room, he saw Barnes standing over Robert with a black revolver. Ellis ducked and hid, but Barnes told him to crawl out.

Barnes asked Ellis who else was home. Ellis explained that Leea and Marilyn were also there. Barnes ordered Ellis and Robert to crawl to the back room. Barnes allowed Ellis to retrieve Leea. Together, all of them went to the back bedroom. As they entered, Marilyn came out of the bathroom with no clothes. Barnes told her to sit on the bed. Leea stayed in Ellis's arms.

Barnes had Robert and Marilyn surrender their wedding rings and Robert's watch. Barnes asked them where they kept the safe, money, and valuables. Barnes went through the drawers and emptied a jewelry box, piling the jewelry on the floor. He was going through the drawers "very fast and trying to grab anything he could."

Barnes ordered Ellis to cut a lamp cord with a pair of scissors. Barnes used the lamp cord to tie Robert's hands, and he tied Robert's feet with a telephone cord. Barnes told Ellis to cut another lamp cord, telling him not to do anything stupid. Barnes said he did not want to use his gun, but he warned Ellis he had used it before.

While this was happening, Portis returned home. When he arrived, he noticed a car parked sideways between the Humbles' house and the neighbor's house with one of its doors open. It looked "like someone just like ran in to drop something off or something."

Finding the front door to the house unlocked, Portis thought something was wrong. Inside it was “awkwardly quiet” When Portis looked into the master bedroom, he saw Robert tied up on the floor and Marilyn on the bed without her clothes. He saw Ellis holding Leea. Thinking the house had been robbed but the robbers were gone, Portis leaned into the room to help. As he did this, he locked eyes with Barnes. Portis watched Barnes point the gun at him, and he watched the gun flame. The shot hit him near his left nipple and came out his back. The shot knocked him back and down. Portis heard his daughter scream.

As Ellis cut the lamp cord, he heard the gunshot. He turned and saw Barnes preparing to shoot him. Ellis turned, trying to protect Leea. He heard a shot and noticed blood on his shirt. Leea was screaming, and Ellis dropped to the ground. Ellis had been grazed by the bullet, but Leea was bleeding a lot.

After Barnes left, Portis was lying in the hallway, bleeding. Every time Portis’s heart would beat, blood would pulse out of his chest and down his back. He thought he was going to die, but he tried to calm himself until paramedics arrived. He and Ellis went to the kitchen and called 911.

After police and paramedics arrived, Portis and Leea were airlifted to USC Medical Center. A bullet had gone through Leea’s leg, shattering her tibia and fibula. She was in the hospital three or four days. Portis underwent surgery and was in the hospital a little more than a week.

2. Other Incidents

2.1. Juliette Bardo

On November 12, 2013, Easley attacked Juliette Bardo with a gun and tried to force her to let him into her home. When

Bardo told Easley she did not have the key to the locked door, Easley struck her in the head with the gun. Easley put a gun to her throat and threatened to kill her, but after he was convinced she did not have the key, he ran away.

2.2. Sion and Eliza Rodriguez y Gibson

On November 22, 2013, Barnes and another man forced their way into the home of Sion and Eliza Rodriguez y Gibson with guns. They struck Sion and demanded money and other valuables. After looting the house of jewelry and electronics, they hogtied them and fled the house.

2.3. Danae and Marcus Howe

On November 27, 2013, Barnes and another man tried to push their way inside the home of Danae and Marcus Howe, but were rebuffed and pushed outside by Marcus. In the struggle that ensued, Marcus was shot twice and killed. Danae was shot once and suffered a fractured hip. She was in the hospital for five days, and it was months before she could walk without assistance.

2.4. John and Clara Cedillo

On December 4, 2013, Barnes and Easley used guns to push their way inside the home of John and Clara Cedillo. When John tried to resist, both men beat him severely, hitting him over the head with their pistols, kicking him, and causing John to briefly lose consciousness. After securing Clara, Barnes hit her hard several times on the back of her head. As Easley gathered cords to tie him, John fought back again and succeeded in pushing Easley from the house and onto the front lawn. Two

neighbors saw the struggle and began yelling. Barnes and Easley fled the scene.

DISCUSSION

1. Kidnapping for Robbery

Subdivision (b)(1) of section 209 provides that “[a]ny person who kidnaps or carries away any individual to commit robbery ... shall be punished by imprisonment in the state prison for life with the possibility of parole.” The law applies only “if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.” (§ 209, subd. (b)(2).)

At trial, the prosecutor argued defendants violated section 209 when they forcibly moved Yuhong, Contreras, and Robert from room to room inside their homes during the robberies. The jury convicted Barnes of kidnapping for robbery as to all three victims, and convicted Easley of kidnapping for robbery as to Yuhong and Contreras.⁶

On appeal, defendants contend the evidence was insufficient to support their convictions for violating section 209 because the movement of the victims was incidental to the underlying robberies and, in any event, did not increase the risk of harm to the victims over and above the risk present in the home invasion robberies.

⁶ The allegation that Easley kidnapped Robert for robbery was dismissed before trial.

1.1. *Daniels*

In *Daniels*, the defendants used guns to force their way inside the homes of three women. (*Daniels, supra*, 71 Cal.2d at pp. 1123–1124.) In each incident, the defendants robbed the victim, moving her from one room of her home to another room. (*Ibid.*) The defendants forced the victims to move “for distances of 18 feet, 5 or 6 feet, and 30 feet respectively.” (*Id.* at p. 1126.)

The California Supreme Court determined “the intent of the Legislature in amending Penal Code, section 209 in 1951 was to exclude from its reach not only ‘standstill’ robberies ... but also those in which the movements of the victim are merely incidental to the commission of the robbery and do not substantially increase the risk of harm over and above that necessarily present in the crime of robbery itself.” (*Daniels, supra*, 71 Cal.2d at p. 1139.)

Daniels concluded the defendants’ forcible movement of each victim was incidental to the underlying robbery and did not substantially increase the risk of harm beyond the risk in committing the robbery. (*Daniels, supra*, 71 Cal.2d at p. 1140.) The court explained that “when in the course of a robbery a defendant does no more than move his victim around inside the premises in which he finds him—whether it be a residence, as here, or a place of business or other enclosure—his conduct generally will not be deemed to constitute the offense proscribed by section 209. Movement across a room or from one room to another, in short, cannot reasonably be found to be asportation ‘into another part of the same county.’ (Pen. Code, § 207.)”⁷ (*Ibid.*)

⁷ Section 207 defines kidnapping: “(a) Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or

In 1997, the Legislature added subdivision (b)(2) to section 209: “This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.” (Stats. 1997, ch. 817 (A.B. 59).) The act provided: “It is the intent of the Legislature that the two-prong test of asportation for kidnapping, as set forth in *People v. Daniels*, 71 Cal.2d 1119, 1139, be applied to violations of subdivision (b) of Section 209 of the Penal Code, as amended by this act, pursuant to the decision of the California Supreme Court in *People v. Rayford*, 9 Cal.4th 1, 20 [(*Rayford*)].”⁸ (Stats. 1997, ch. 817, § 17 (A.B. 59).)

1.2. The Two-part Test

The crime of kidnapping for robbery requires the prosecution to prove that the movement of the victim (1) was not merely incidental to the robbery, and (2) increased the risk of harm to the victim beyond what was necessarily present in the robbery. (§ 209, subd. (b)(2).) Both requirements must be satisfied. (*People v. Taylor* (2020) 43 Cal.App.5th 1102, 1106 (*Taylor*).)

arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.” (§ 207, subd. (a).)

⁸ *Rayford* applied the two-part *Daniels* test to kidnapping for rape, oral copulation, sodomy, or rape by instrument (former § 208, subd. (d)). (*Rayford, supra*, 9 Cal.4th at pp. 12–13.) Subsequent cases sometimes refer to the “*Daniels/Rayford* test.” (See *People v. Dominguez* (2006) 39 Cal.4th 1141, 1152 (*Dominguez*).)

Whether the movement is merely incidental to the robbery requires considering the “scope and nature” of the movement. (*Rayford, supra*, 9 Cal.4th at p. 12.) Courts have analyzed this question “by considering the context of the environment in which the movement occurred.” (*Ibid.*) *Daniels* cited the Model Penal Code’s definition of kidnapping “in terms of removing the victim from his customary place of abode or work” (*Daniels, supra*, 71 Cal.2d at p. 1138.) In *Daniels*, where the defendants moved their victims within the four walls of the homes where the defendants found them, the court found the movements were incidental to the underlying robberies. (*Id.* at p. 1131, fn. 5.)

“The second prong of the *Daniels* test refers to whether the movement subjects the victim to a substantial increase in risk of harm above and beyond that inherent in robbery.” (*Rayford, supra*, 9 Cal.4th at p. 13.) This includes “such factors as the decreased likelihood of detection, the danger inherent in a victim’s foreseeable attempts to escape, and the attacker’s enhanced opportunity to commit additional crimes.” (*Ibid.*) *Daniels* recognized that robberies commonly involved the victim being “confined briefly at gunpoint or bound and detained, or moved into and left in another room or place.” (*Daniels, supra*, 71 Cal.2d at p. 1135, italics omitted.) Accordingly, the court did not believe the movements of the victims into different rooms further inside their homes substantially increased “the risk of harm otherwise present.” (*Id.* at p. 1140.)

“[W]hether the victim’s forced movement was merely incidental ... is necessarily connected to whether it substantially increased the risk to the victim. ‘These two aspects are not mutually exclusive, but interrelated.’” (*Dominguez, supra*, 39 Cal.4th at p. 1152, quoting *Rayford, supra*, 9 Cal.4th at p. 12; see

also *Taylor, supra*, 43 Cal.App.5th at p. 1112 [“The two elements [of section 209] are interrelated but do not subsume each other.”].) For example, where the defendants moved their victims entirely within the victims’ place of work—a McDonalds franchise—the movement was not merely incidental because the defendants forced the victims “down a hidden stairway, and into a locked freezer” where the temperature was approximately 20 degrees. (*People v. Vines* (2011) 51 Cal.4th 830, 870–871 (*Vines*) [“Under these circumstances, we cannot say the ‘scope and nature’ of this movement was ‘merely incidental’ to the commission of the robbery.”].)

1.3. Standard of Review

Although defendants’ challenge is to the sufficiency of the evidence, the central issue before us is the scope and reach of section 209. (See *People v. Prunty* (2015) 62 Cal.4th 59, 71; *Taylor, supra*, 43 Cal.App.5th at pp. 1105–1106.) We review the scope and reach of the statute de novo, but we view “the facts in the light most favorable to the party that prevailed at trial.” (*Taylor*, at p. 1105.)

1.4. Analysis

Here, as in *Daniels*, defendants’ forcible movement of their victims occurred entirely within the homes where defendants found them. Defendants moved Yuhong a great deal, but all the movement took place inside the home. They took her from one downstairs room to another downstairs room, up the stairs, from one upstairs room to another upstairs room, back down the stairs, and up the stairs again to the master bedroom. Before leaving, they bound Yuhong and put her in a master bedroom

closet. But they never took her away from, or even outside, the house.

The same was true with Contreras and Robert. Defendants moved Contreras from the front door to an area near the kitchen and then to the master bedroom. Before leaving, they moved Contreras into the hallway and tied him up. Defendants moved Robert from the front door to the master bedroom and tied him up inside the master bedroom. Again, they never took either victim away from the home.

Moreover, unlike *Vines*, none of these movements increased the risk of harm to the victims beyond the risk inherent in an armed home invasion robbery. For example, in Yuhong's case, the master-bedroom closet door was not locked; she was able to communicate with her son through the door, and she was able to get herself out of the closet and untie herself without any great difficulty.

To be sure, defendants may have moved the victims a greater distance than the defendants moved the victims in *Daniels*, or moved them between more rooms, or up and down stairs, or even into a closet. The key fact, however, is that all this movement took place inside the victims' homes to help defendants get valuable things located inside those homes. The Legislature could not have intended that the difference in penalties for robbery and kidnapping for robbery depends on the size of the victim's home or the location of the valuables within the home.⁹ (See *Daniels, supra*, 71 Cal.2d at p. 1135 [it is a

⁹ The punishment for kidnapping for robbery is life in prison with the possibility of parole. (§ 209, subd. (b)(1).) The triad for residential

common occurrence in robbery that the victim be confined briefly at gunpoint or bound and detained, or moved into and left in another room or place].) In sum, we conclude the movements of the three victims were incidental to the underlying crimes of robbery. In reaching our conclusion, we do not mean to suggest that the forced movement of a victim entirely within his or her home cannot, as a matter of law, constitute kidnapping for robbery. We simply note that in this case, the forced movements of the three victims were brief and conducted solely to facilitate the robberies.

The People contend *Daniels* and other cases requiring a *substantial* increase in the risk of harm to the victim—beyond what was inherent in the underlying offense—are no longer good authority because the Legislature codified a different standard, requiring only an *increased* risk of harm. (§ 209, subd. (b)(2).) In their view, this difference is so fundamental that opinions like *Daniels*, “that applied the abrogated standard of substantial increase in risk of harm are inapplicable here.”

We disagree. The Legislature explicitly intended “the two-prong test of asportation for kidnapping, as set forth in *People v. Daniels*, 71 Cal.2d 1119, 1139, be applied to violations of subdivision (b) of Section 209 of the Penal Code” (Stats. 1997, ch. 817, § 17 (A.B. 59).) Although the Legislature codified “a modified version” of *Daniels*, the California Supreme Court has never overruled or disapproved *Daniels*. (See *People v. Martinez* (1999) 20 Cal.4th 225, 232, fn. 4, overruled on other grounds in *People v. Fontenot* (2019) 8 Cal.5th 57, 70.) In light of the

robbery committed by one or two persons is three, four, or six years. (§ 213, subd. (a)(1)(B).)

Legislature's explicit adoption of the *Daniels* test for asportation, and in the absence of any disapproval from our state's high court, we follow *Daniels*. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 453.)

The People also contend the movement of the victims, and Yuhong especially, was "far beyond what was necessary to complete the robbery." Because the movement of the victims was not necessary, they argue the movement was not merely incidental. The People suggest defendants could have left Yuhong and her son downstairs. One of the defendants, the People argue, could have guarded her and her son downstairs while the other defendant went around the house searching for valuables. The People make a similar argument as to Contreras and Robert.

In *Daniels*, the defendants did not need to move their victims from one room to another to rob them. (*Daniels, supra*, 71 Cal.2d at pp. 1123–1124.) In one of those robberies, the defendants moved the victim from the dining room to the kitchen, 18 feet away, and repeated the same demand for money they made in the dining room. (*Id.* at p. 1123.) Nothing suggested the defendants could not have tried to rob the victim without moving her. (*Ibid.*) The same was true for the other two kidnappings for robbery, and the California Supreme Court nonetheless reversed all three convictions. (*Id.* at pp. 1123–1124.)

People v. Williams (1970) 2 Cal.3d 894 is also instructive. In *Williams*, the robbers moved a gas station attendant from the cash register to the bathroom, where they locked him up. (*Id.* at p. 902.) After they released the attendant from the bathroom, the robbers forced the attendant to help them move items outside to a getaway car. (*Id.* at p. 900.) The attendant was then ordered to walk away down the street. (*Ibid.*) The *Williams* court held that

the movements of the attendant “on the gas station premises both before and after he was locked in the bathroom appear to have been brief and to have been solely to facilitate the commission of the crime of robbery. It thus appears that those movements were merely incidental to the commission of the robbery within the meaning of *Daniels*.” (*Id.* at p. 902.)

Daniels and *Williams* compel the reversal of defendants’ kidnapping for robbery convictions.

2. Amending the Indictment

The grand jury returned an indictment accusing defendants of the kidnappings for robbery of two additional victims (counts 9 and 23). Before trial, the court granted defendants’ section 995 motions to strike those charges. Subsequently, during the trial, the prosecutor moved to amend the indictment to charge both defendants with false imprisonment (§ 236) of those same victims (counts 36 and 37). The court granted the prosecutor’s request, and the jury found Barnes guilty of two counts of false imprisonment and Easley guilty of one.

Defendants contend these convictions must be reversed because the court could not lawfully amend the indictment to add new charges. The People concede the court could not add the new charges, but contend defendants failed to preserve the issue by not objecting in the trial court.

The parties rely on section 1009, which governs the timing and types of amendments that can be made to an indictment. (§ 1009.) At any stage of the proceedings, the court may permit an amendment of the indictment “for any defect or insufficiency” (*Ibid.*) The indictment, however, cannot “be amended so as to change the offense charged” (*Ibid.*) For a

new charge to be added, the court must “order the case submitted to the same or another grand jury” (*Ibid.*) Here, the court added new offenses to the indictment, a power belonging solely to the grand jury. This was error.

The error, however, was not limited to an absence of statutory authority. More fundamentally, a court lacks jurisdiction to try a defendant for accusations not included in the indictment. (*People v. Granice* (1875) 50 Cal. 447, 448.) Without jurisdiction, the court has no power “to render a valid judgment against a person.” (*Burns v. Municipal Court of Los Angeles Judicial Dist.* (1961) 195 Cal.App.2d 596, 599.) “When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and such a judgment is vulnerable to direct or collateral attack at any time.” (*People v. Vasilyan* (2009) 174 Cal.App.4th 443, 450.) A challenge to fundamental jurisdiction may be raised “at any time (even on appeal) and is not subject to forfeiture or waiver.” (*Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1347.)

Here, the court had no jurisdiction over the charges of false imprisonment because those charges were not included in the grand jury indictment. Consequently, the resulting judgments on those charges are void, and defendants could not forfeit their jurisdictional challenge.

The People cite a case where the defendant was found to have forfeited a challenge to a lesser related offense added to the accusatory pleading at his request. (*Orlina v. Superior Court* (1999) 73 Cal.App.4th 258, 264.) That case, however, does not address subject matter jurisdiction. And *Orlina* is inconsistent with *Granice*, cited above, and is distinguishable because the defendant in *Orlina* asked the court to instruct on the new

offense. In this case, defendants did not ask the court to add these offenses, and there was no conceivable benefit to them in having the charges added to the indictment.

3. Sentencing Issues

Barnes contends his sentences for the attempted robberies in counts 18 and 19 were unauthorized. He also contends the abstract of judgment does not reflect his presentence credits. Easley contends the case must be remanded to allow the trial court to exercise its discretion whether to strike his two five-year serious felony priors enhancements. Both defendants contend the fines and fees were unconstitutional because the court did not find they had the ability to pay them.

Because we vacate defendants' sentences, we decline to address these sentencing issues. At resentencing, the court can reconsider the lawfulness of Barnes's sentence and will have the discretion, if it wishes, to strike Easley's two five-year serious felony priors enhancements. The court may also consider defendants' ability to pay any fines and fees.

DISPOSITION

Defendants' convictions for kidnapping for robbery (counts 4, 13, and 28) and false imprisonment (counts 36 and 37) are reversed.¹⁰ Defendants' sentences are vacated, and the matter is remanded for resentencing.

In all other respects, we affirm the judgments.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.

¹⁰ Because we reverse the kidnapping for robbery convictions, we do not address whether section 209 is constitutionally infirm.